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ATTORNEYS FOR PLAINTIFF K.D., a minor
by and through his Guardian ad Litem
LAQUANTAE DAVIS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

K.D., a minor, by and through his
Guardian ad Litem LAQUANTAE
DAVIS,

Plaintiff,

v.

CALIBER CHANGEMAKERS
ACADEMY, VALLEJO UNIFIED
SCHOOL DISTRICT, RACHAEL
WEINGARTEN, AISHA FORD and
DOES 1-50 inclusive,

Defendants.

Case No. 2:23-CV-00083-JAM-JDP

**STIPULATED PROTECTIVE
ORDER**

**Hon. John A. Mendez
Magistrate Jeremy D. Peterson**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery

1 and that the protection it affords from public disclosure and use extends only to the
2 limited information or items that are entitled to confidential treatment under the
3 applicable legal principles. The parties further acknowledge, as set forth in Section
4 12.3, below, that this Stipulated Protective Order does not entitle them to file
5 confidential information under seal; Civil Local Rules 141 and 141.1 set forth the
6 procedures that must be followed and the standards that will be applied when a
7 party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and includes, but is not
14 limited to, parties’ personnel records and other records referencing employment or
15 job performance, parties’ student records, and parties’ medical records.

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House
17 Counsel (as well as their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL.”

21 2.5 Disclosure or Discovery Material: all items or information, regardless of
22 the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced
24 or generated in disclosures or responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as
27 an expert witness or as a consultant in this action.

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1 2.7 House Counsel: attorneys who are employees of a party to this action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party
7 to this action but are retained to represent or advise a party to this action and have
8 appeared in this action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (1) any information copied or
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or
28 presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover the
2 following information: (a) any information that is in the public domain at the time of
3 disclosure to a Receiving Party or becomes part of the public domain after its
4 disclosure to a Receiving Party as a result of publication not involving a violation of
5 this Order, including becoming part of the public record through trial or otherwise;
6 and (b) any information known to the Receiving Party prior to the disclosure or
7 obtained by the Receiving Party after the disclosure from a source who obtained the
8 information lawfully and under no obligation of confidentiality to the Designating
9 Party. Any use of Protected Material at trial shall be governed by a separate
10 agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations
13 imposed by this Order shall remain in effect until a Designating Party agrees
14 otherwise in writing or a court order otherwise directs. Final disposition shall be
15 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
16 or without prejudice; and (2) final judgment herein after the completion and
17 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
18 including the time limits for filing any motions or applications for extension of time
19 pursuant to applicable law.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify – so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber or retard the case development process or to
4 impose unnecessary expenses and burdens on other parties) expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents,
16 but excluding transcripts of depositions or other pretrial or trial proceedings), that
17 the Producing Party affix the legend "CONFIDENTIAL" to each page that contains
18 protected material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s)
20 (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the inspection
24 and before the designation, all of the material made available for inspection shall be
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
26 it wants copied and produced, the Producing Party must determine which documents,
27 or portions thereof, qualify for protection under this Order. Then, before producing
28 the specified documents, the Producing Party must affix the "CONFIDENTIAL"

1 legend to each page that contains Protected Material. If only a portion or portions of
2 the material on a page qualifies for protection, the Producing Party also must clearly
3 identify the protected portion(s) (e.g., by making appropriate markings in the
4 margins).

5 (b) for testimony given in deposition, that the Designating Party shall either
6 identify on the record, before the close of the deposition, all protected testimony, or
7 designate the transcript or portions thereof “CONFIDENTIAL” within twenty (20)
8 days after the receipt of the transcript in any form.

9 (c) for information produced in some form other than documentary and for any
10 other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the
12 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
13 warrant protection, the Producing Party, to the extent practicable, shall identify the
14 protected portion(s).

15 (d) Nothing contained in this Order shall be deemed to limit or waive any right
16 of the Parties to object to discovery with respect to any information or documents
17 which may be claimed to be outside the scope of discovery for any reason, including
18 without limitation the reason that is privileged, confidential, and/or protected by
19 individual privacy rights which would not adequately be protected by the provisions
20 of this Order. Identification of any documents or information as Confidential
21 Information pursuant to this Order shall not constitute an admission or
22 acknowledgement on the behalf of any Party that such documents or information are
23 admissible as evidence in any proceeding in this action. The Parties further retain
24 the right to use their own documents and information with complete discretion.

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive the
27 Designating Party’s right to secure protection under this Order for such material.
28 Material unintentionally disclosed without the requisite designation may be

1 retroactively designated within twenty (20) days of its inadvertent production so
2 designated in the same manner and shall be treated appropriately from the date
3 written notice of the designation is provided to the other Party or Parties and/or
4 counsel of record for the other Party or Parties.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge to a
8 Designating Party's confidentiality designation is necessary to avoid foreseeable,
9 substantial unfairness, unnecessary economic burdens, or a significant disruption or
10 delay of the litigation, a Party does not waive its right to challenge a confidentiality
11 designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process by providing written notice of each designation it is challenging
15 and describing the basis for each challenge. To avoid ambiguity as to whether a
16 challenge has been made, the written notice must recite that the challenge to
17 confidentiality is being made in accordance with this specific paragraph of the
18 Protective Order. The parties shall attempt to resolve each challenge in good faith
19 and must begin the process by conferring directly (in voice to voice dialogue; other
20 forms of communication are not sufficient) within 14 days of the date of service of
21 notice. In conferring, the Challenging Party must explain the basis for its belief that
22 the confidentiality designation was not proper and must give the Designating Party
23 an opportunity to review the designated material, to reconsider the circumstances,
24 and, if no change in designation is offered, to explain the basis for the chosen
25 designation. A Challenging Party may proceed to the next stage of the challenge
26 process only if it has engaged in this meet and confer process first or establishes that
27 the Designating Party is unwilling to participate in the meet and confer process in a
28 timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 230 (and in compliance with Civil Local Rules 141 and 141.1, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the litigation has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
11 only to:

12 (a) Attorneys of record herein (including House Counsel and Outside Counsel
13 of Record) and their affiliated attorneys, paralegals, clerical and secretarial staff
14 employed by such attorneys who are actively involved in the Proceedings and are not
15 employees of any Party. Provided, however, that each non-lawyer given access to
16 Confidential Information shall be advised that such are being Disclosed pursuant to,
17 and are subject to, the terms of this Stipulation and Protective Order and that they
18 may not be disclosed other than pursuant to its terms;

19 (b) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (c) Mediators agreed to by the parties who have signed the “Acknowledgment
23 and Agreement to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, mock
26 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
27 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
28 (Exhibit A);

1 (f) witnesses, during deposition or trial testimony;

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 (h) those categories of persons listed in paragraph 7.2(a) – (g) of this
5 Stipulation and Protective Order in matters involving allegation of injury or harm
6 caused by Caliber Changemakers Academy, Vallejo City Unified School District, or
7 Caliber Public Schools, however, that prior to the Disclosure of “CONFIDENTIAL”
8 Information or Items, counsel for the Party making the Disclosure shall deliver a
9 copy of this Stipulation and Protective Order to such person, shall explain its terms
10 to such person, and shall secure the signature of such person on the Acknowledgment
11 and Agreement to Be Bound” (Exhibit A);

12 (i) any other person that the Designating Party agrees to in writing.

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

15 If a Party is served with a subpoena or a court order issued in other litigation
16 that compels disclosure of any information or items designated in this action as
17 “CONFIDENTIAL,” that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification shall
19 include a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to
21 issue in the other litigation that some or all of the material covered by the subpoena
22 or order is subject to this Protective Order. Such notification shall include a copy of
23 this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by
25 the Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with
27 the subpoena or court order shall not produce any information designated in this
28 action as “CONFIDENTIAL” before a determination by the court from which the
subpoena or order issued, unless the Party has obtained the Designating Party’s

1 permission. The Designating Party shall bear the burden and expense of seeking
2 protection in that court of its confidential material – and nothing in these provisions
3 should be construed as authorizing or encouraging a Receiving Party in this action to
4 disobey a lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by a Non-
8 Party in this action and designated as "CONFIDENTIAL." Such information
9 produced by Non-Parties in connection with this litigation is protected by the
10 remedies and relief provided by this Order. Nothing in these provisions should be
11 construed as prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to
13 produce a Non-Party's confidential information in its possession, and the Party is
14 subject to an agreement with the Non-Party not to produce the Non-Party's
15 confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party
17 that some or all of the information requested is subject to a confidentiality agreement
18 with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the Non-
23 Party.

24 (4) If the Non-Party fails to object or seek a protective order from this
25 court within 14 days of receiving the notice and accompanying information, the
26 Receiving Party may produce the Non-Party's confidential information responsive to
27 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
28 Party shall not produce any information in its possession or control that is subject to

1 the confidentiality agreement with the Non-Party before a determination by the
2 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
3 expense of seeking protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
9 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
10 persons to whom unauthorized disclosures were made of all the terms of this Order,
11 and (d) request such person or persons to execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other protection,
17 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
18 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
19 may be established in an e-discovery order that provides for production without prior
20 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
21 parties reach an agreement on the effect of disclosure of a communication or
22 information covered by the attorney-client privilege or work product protection, the
23 parties may incorporate their agreement in the stipulated protective order submitted
24 to the court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the court in the future.

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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground. Similarly, no Party
4 waives any right to object on any ground to use in evidence of any of the material
5 covered by this Protective Order.

6 12.3 Filing Protected Material. No document will be sealed, nor shall a
7 redacted document be filed, without the prior approval of the court. If a document for
8 which sealing or redaction is sought relates to the record on a motion to be decided by
9 Judge Mendez, the request to seal or redact should be directed to him and not the
10 assigned Magistrate Judge. All requests to seal or redact shall be governed by Local
11 Rules 141 (sealing) and 140 (redaction); protective orders covering the discovery
12 phase of litigation shall not govern the filing of sealed or redacted documents on the
13 public docket. The court will only consider requests to seal or redact filed by the
14 proponent of sealing or redaction. If a party plans to make a filing that includes
15 material an opposing party has identified as confidential and potentially subject to
16 sealing, the filing party shall provide the opposing party with sufficient notice in
17 advance of filing to allow for the seeking of an order of sealing or redaction from the
18 court.

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: July__2023

WALKUP, MELODIA, KELLY & SCHOENBERGER

21 By:

22 KHALDOUN A. BAGHDADI

23 VALERIE N. ROSE

24 KELLY GANCI

Attorneys for PLAINTIFF K.D., a minor by
and through his Guardian ad Litem

25 LAQUANTAE DAVIS

26 *Signatures Continued*
27
28

1 Dated: July__ 2023

YOUNG MINNEY CORR LLP

2 By:

3 WENDY WALKER
4 Attorney for Defendants
5 CALIBER CHANGEMAKERS ACADEMY,
6 RACHAEL WEINGARTEN, AISHA FORD

7 Dated: July __ 2023

JOHNSON SCHACHTER & LEWIS

8 By:

9 KELLIE M. MURPHY
10 KRISTEN M. CAPRINO
11 Attorney for Defendant
12 VALLEJO CITY UNIFIED SCHOOL
13 DISTRICT

14 Pursuant to stipulation of the parties, the Stipulated Protective Order is hereby
15 entered.

16 IT IS SO ORDERED.

17 Dated: July 27, 2023

18 
19 JEREMY D. PETERSON
20 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California in the case of *K.D. v. Caliber Changemakers Academy et al* Case No. 2:23-CV-00083-JAM-JDP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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